IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 3012 of 2006()

AGAINST THE ORDER DATED 01/08/2006 IN CMP.4249/2006 IN CC 1047/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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PETITIONER: ACCUSED:

P. SHAJI, S/O. PODIKUNJU,
RESY HOUSE, KANDACHIRA, PULLICHIRA P.O.,
KOTTIYAM, KOLLAM.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.DILEEP P.PILLAI
SRI.RENJITH B.MARAR
SRI.T.K.SUJITH

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. RADHAKRISHNA PILLAI, S/O.RAGHAVAN PILLAI
ANU BHAVAN, ALUMOODU P.O., MUKHATHALA, KOLLAM.

ADDL. R3. ANITHAKUMARI, W/O. LATE RADHAKRISHNAPILLAI
AGED 37 YEARS, ANU BHAVAN
ALOOMUD P.O., MUKKATHALA, KOLLAM.

(ALLOWED AS PER ORDER ON CRL.M.A.984/07 DT.7.3.07)

R2 & 3 BY ADV. SRI. SHAJI P.CHALY
R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3012 of 2006

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Dated this the 7th day of March, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. Trial has reached the fag end. The petitioner was examined as DW1 after granting the requisite leave under Section 315 Cr.P.C. The complainant could not cross examine him. A request was made to recall the petitioner. That petition was allowed. Against that the petitioner has come before this Court.

2. The petitioner was granted permanent exemption from appearance. The learned Magistrate was satisfied that notwithstanding the grant of permanent exemption, the accused must make himself available for cross examination. Notwithstanding the omission on the part of the complainant to cross examine the accused on the date when he was examined in chief, the learned Magistrate in his direction granted that prayer. I am unable to find anything vitiating the exercise of that discretion by the learned Magistrate, which can prompt me to invoke the powers under Section 482 Cr.P.C. The learned Magistrate has correctly adverted to the fact that denial

of opportunity to cross examine would result in injustice. The approach made by the learned Magistrate appears to be absolutely justified.

3. The counsel for the petitioner contends that the petitioner had gone abroad only on 3.5.2006. The petitioner can make a request to the learned Magistrate specifying the date on which he shall be available for cross examination. The learned Magistrate must consider such request and issue peremptory direction to the petitioner to appear on a date after considering his request and of course giving the petitioner reasonable time to reach India for the purpose of such examination.

4. This Crl.M.C. is hence dismissed, but with the above observations.

(R. BASANT)
Judge

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